

Application No.: 10/561,684
Amendment Dated: February 19, 2008
Reply to Office Action of November 20, 2007

REMARKS/ARGUMENTS

By this Amendment claims 11 and 23 are canceled and claim 1 is amended. Claims 1-10 and 12-22 are pending.

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

The Examiner sets forth that the drawings are objected to because the word "Figur" should be corrected to "Figure". With regard to Figure 7 the Examiner believes that the phrase "Stand der Technik" should be replaced with "Prior Art" and that corrected drawing sheets in compliance with 37 C.F.R. 1.121(d) are required in reply to the Office Action to avoid abandonment of the application. According to the Examiner, any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended and the figure or figure number of an amended drawing should not be labeled as "amended."

The Examiner further sets forth that if a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. The Examiner believes that additional replacement sheets may be necessary to show the renumbering of the remaining figures and that each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 C.F.R. 1.121(d). According to the Examiner, if the changes are not accepted by the Examiner, the Applicants will be notified and informed of any required corrective action in the next Office Action and the objection to the

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drawings will not be held in abeyance.

The Applicants respectfully submit that the Applicants are awaiting formal drawings from the Applicants' draftsman. The formal drawings will be filed immediately upon receipt.

The Examiner sets forth that Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description. requirement and that the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner further sets forth that claim 23 recites the step of "coiling-up a compound comprising of sample chambers and holding frames" and that it is not clear how the Applicants intend to coil-up a compound that includes sample chambers and holding frames.

The Applicants respectfully submit that claim 23 has been canceled.

The Examiner sets forth that claims 1-3, 4, 7, 8, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 3,993,816 to Baudet et al.

The Examiner further sets forth that with regard to claim 1 the phrase "for cyroconservation of at least one sample" is not being afforded any patentable weight as this phrase does not structurally distinguish the claims over the prior art.

According to the Examiner, Baudet et al. discloses a receiving device comprising a plurality of hose-shaped chambers (reference item 2) joined in a holding device, the holding device is shown as comprising frames (reference item 1) having frame parts, in at least figures 1, 2, 4, 6-9 the hose-shaped members are provided in a self-supporting arrangement, and in at least figures 14 and 15 the receiving device has a plurality of frames.

With regard to claims 2 and 3 the Examiner believes that the frames are shown as being generally planar and rectangular.

With regard to claim 4 the Examiner further believes that one can see in Figure 13 "distances" between the frames when viewing either the gaps adjacent the tabs (reference item 4) or the gap between alternating frames.

With regard to claim 7 the Examiner further believes that one can see a stack of frames in Figures 14 and 15.

With regard to claim 8 the Examiner further believes that one can see in Figure 16 a stack of frames held together by a collar (reference item 17) which, therefore, functions as a bracket.

With regard to claim 18 the Examiner further believes that one can see in Figure 13 that the sample chambers (hose-shaped members) are provided on frames in the longitudinal direction of the frames.

With regard to claim 19 the Examiner further believes that one can see in Figure 13 that the sample chambers are provided by uncoiling delivering rollers (reference item 9).

With regard to claim 20 the Examiner further believes that the sample chambers are drawn from their respective delivery rollers simultaneously.

The Examiner further sets forth that claims 1-5, 7-10, 12-15, 18-20 and 22 are rejected under 35 U.S.C.103(a) as being unpatentable over International Patent Application Publication WO 2002/467191 to Fuhr et al. in view of Baudet et al.

According to the Examiner, Fuhr et al. teaches that it is known to provide a plurality of flexible, hose-shaped sample chambers in a holding device. The Examiner further believes that as seen in Figure 2 the holding device is a frame (reference item 627) having frame elements that

form a rectangle, the device also comprises an integrated data storage unit (reference item 622), and that Fuhr et al. does not teach a plurality of holding frames.

The Examiner further sets forth that Baudet et al. teaches a sample receiving device comprising a plurality of hose-shaped chambers (reference item 2) joined in a holding device, the holding device is shown as comprising frames (reference item 1) having frame parts. The Examiner believes that in at least Figures 1, 2, 4, 6-9 the hose-shaped members are provided in a self-supporting arrangement and that in at least Figures 14 and 15 the receiving device has a plurality of frames.

According to the Examiner, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Fuhr et al. with the teachings of Baudet et al. in order to provide a plurality of frames as this would expedite the manufacturing of multiple sample receiving devices.

With regard to claim 2 both Fuhr et al. and Baudet et al., the Examiner believes that these teach that the frames are shown as being generally planar and rectangular.

With regard to claim 4, the Examiner further believes that one can see in Baudet et al.'s Figure 13 the presence of "distances" between the frames when viewing either the gaps adjacent the tabs (the Examiner directs the Applicants' attention to reference item 4) or the gap between alternating frames.

With regard to claim 5, the Examiner further believes that the Applicant's choice of a preferred distance dimension is an obvious modification to the device of Baudet et al. and does not patently distinguish over the prior art. The Examiner directs the Applicants' attention to MPEP §2144.04 wherein the Examiner sets forth:

In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert.denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

With regard to claim 7, the Examiner further believes that one can see a stack of frames in Baudet et al.'s Figures 14 and 15.

With regard to claim 8, the Examiner further believes that one can see in Baudet et al.'s Figure 16 a stack of frames held together by a collar (reference item 17) which, therefore, functions as a bracket and that this is useful for transporting the stack of frames.

With regard to claim 10, the Examiner further believes that it is considered obvious to provide each holding frame with an integrated data storage element so that each device can operate correctly for cryopreservation.

With regard to claim 12, the Examiner further believes that Fuhr et al. also teaches that it is known to provide the sample chambers with rectangular cross-sections as seen in Figures 9 and 10.

With regard to claim 13, the Examiner further believes that the all of the sample chambers are formed in the frame such that a planar, lateral surface is formed that is parallel to plane of the holding frame.

With regard to claims 14 and 15, the Examiner further believes that Fuhr et al. teaches that it is known to provide sample chambers whose cross-section varies along a length of the

sample chamber as seen in Figure 4 and Figure 5.

With regard to claim 18, the Examiner further believes that one can see in Figure 13 that the sample chambers (hose-shaped members) are provided on frames in the longitudinal direction of the frames.

With regard to claim 19, the Examiner further believes that one can see in Figure 13 that the sample chambers are provided by uncoiling delivering rollers (the Examiner directs the Applicants' attention to reference item 9).

With regard to claim 20, the Examiner further believes that the sample chambers are drawn from their respective delivery rollers simultaneously.

With regard to claim 22, the Examiner further believes that Fuhr et al. teaches that the frames and sample chambers are attached via an injection molding process.

The Examiner further sets forth that claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuhr et al. and Baudet et al. as applied to claim 18 above, and further in view of United States Patent 3,551,951 to Schiesser.

The Examiner believes that Fuhr et al. teaches the use of sample chambers formed as flexible members. According to the Examiner, Fuhr et al. does not teach forming the sample chambers by parallel extrusion.

The Examiner believes that Schiesser teaches that it is known to simultaneously extrude multiple flexible tubes. The Examiner directs the Applicants' attention to column 1 (lines 27-29).

The Examiner believes that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Fuhr et al. and Baudet et al. with the

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teachings of Schiesser in order to form the tubes by simultaneous extrusion in order to increase the speed at which the tubes are formed.

The Examiner further sets forth that claims 6, 11, 16, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Accordingly, claim 1 has been amended to substantially include the limitations of claim 11 and claim has been canceled.

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

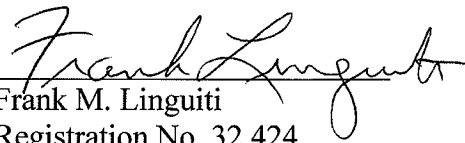
Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

February 19, 2008

Please charge or credit our
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By 
Frank M. Linguiti
Registration No. 32,424
Customer No. 03000
(215) 567-2010
Attorneys for Applicants